IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

CRL.A.No. 2029 of 2003()

AGAINST THE ORDER IN CRLP.571/2003 Dated 27/11/2003
CC.943(A)/2003 of ADDL.CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

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APPELLANT: COMPLAINANT

VIDHYASAGAR,
S/O.MADHAVAN,
NALUKANDATHIL VEEDU, PUTHIYA ROAD (WEST)
EROOR, TRIPOONITHURA,
ERNAKULAM.

BY ADV. SRI.E.A.THANKAPPAN

RESPONDENTS: ACCUSED AND STATE
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1. P.D.ANTONY, S/O.DEVASSY,
PUTHENPURAKKAL,
THEKKUMBHAGAM,
TRIPOONITHURA.P.O.,
KOCHI.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A No. 2029 of 2003 (D)

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Dated this the 1st day of March, 2007

J U D G M E N T

The complainant was absent when C.C.No. 943(A)/ 2003 was taken up by the Additional Chief Judicial Magistrate, Ernakulam, on 15/10/2003. Therefore, complaint was dismissed and accused acquitted. Hence, this appeal, on obtaining leave.

2. The counsel produced the attested copy of C.C Register of the court below. The counsel, relying on the register, submitted that the entry in respect of C.C. No.943(A)/ 2003 was subsequently entered in a different handwriting and the said entry on 15/10/2003 was in contrary to the date given to the appellant, when the sworn statement was taken on 27/06/2003 and the case having adjourned to 06/11/2003.

3. Though the service is complete, there is no representation from the first respondent, the accused. After going through the facts that are involved in this case, I hold that an opportunity be given to the parties to adduce evidence and raise their contentions.

4. Therefore, I set aside the impugned order dated 15/10/2003 and restore C.C.No.943(A)/2003 to the file of Additional Chief Judicial Magistrate Court, Ernakulam.

5. The appellant shall appear before the court below on 02/04/2007.

6. The first respondent accused being not present before this Court, the lower court shall take coercive steps and, on appearance/production of the accused, hear both sides and dispose of the case, as per the law, at the earliest, in any case, within four months thereon.

The appeal is allowed as above.

(J.M.JAMES)
Judge

ms